HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

No. W.P. No. 1546(S/S) of 2001
(Old No. 11202/2000)

Devki Nandan
Vs.
Union of India & others.

Approved for reporting.

Not approved for reporting

Date of decision 15/02/2005

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1546 of 2001 (SS)
(Old No. 11202/2000)

Devki Nandan Pant s/o Sri Jamuna Dutt Pant
R/o village Hatrasia P.O. Bijaipur
District Bageshwar ..... Petitioner

Versus

1. Union of India
2. Chief Of the Army Staff, GOC U.P. Area
   Bareilly.
3. C.C.C.A. (P) through Commandant–cum-CRO
   KRC Ranikhet ..... Respondents

Sri K.N. Joshi, Advocate for the petitioner
Smt. Anjali Bhargava, Standing Counsel for the respondents.

Dated: February 15, 2006

Hon'ble Rajesh Tandon J.

Heard Sri K.N. Joshi counsel for the petitioner and Smt. Anjali Bhargava, Standing counsel for the Central Government.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to grant him disability pension.

Briefly stated, the petitioner was enrolled in the Indian Army on 3rd December 1985 and thereafter he served in Kumaon Regiment of the Indian Army. The petitioner has submitted that at the time of his enrolment in the Indian Army he was found medially fit but after completing nine years of service he was discharge on medical ground on 1.12.1994 and the cause of discharge was recorded as Schizophrenia. The

petitioner presented his case before the Chief Controller of Defence Accounts (Pension) for grant of disability pension to him but the KRC in the month of December 19995 vide letter No. JC-155583-H/12/DP intimated that the petitioner's disability was not attributable to the military service and his claim of disability pension was accordingly rejected. Hence, the petition.

Counter affidavit has been filed by the respondents. They have admitted that the petitioner was enrolled in the Indian Army on 3.12.1985 and he was discharge from service on 1.12.1994. His medical category was BEE (P) as a case of Schizophrenia (295). The respondents have admitted that at the time of recruitment the petitioner was found fit in all respects. From the record, it appears that the petitioner has served in the army for 8 years and according to the petitioner he is entitled for the payment of disability pension in accordance with Rule.

Para 173 of Pension Regulation reads as under:

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over.

Rule 3, 4 and 7 of Appendix II are relevant and, therefore, are quoted below:

3. There must be a casual connection between disablement and military service for attributability of aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be

taken into account and benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field of service cases.

7. *In respect of disease, the following rules will be observed.:*

   (a) *Cases, in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease will fall for acceptance on the basis of aggravation.*

   (b) *A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion hodes, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.*

   (c) *If the disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onest of the disease and that the conditions were due to the circumstances of duty in military service.*

   (d) *In considering whether a particular disease is due to military service, it is necessary to*

relate the established facts in the aetiology of the disease and of its normal development to the effect that conditions of service e.g. exposure, stress climate, etc may have had on its manifestation. Regard must also be had to the time factor.

The question of disability pension came up for consideration in the case of Shiv Murti Rai v. Union of India, (1997) 2 U.P.L.B.& E.C. 1179, Allahabad High Court in a similar case has held as under:

"In the present case, there is no material to suggest tht any indepth study was made at any stage regarding direct and circumstantial evidence which was necessary for deciding issue of entitlement. Further, if the Medical Board could not precisely and with certainty point out the real cause, the benefit of reasonable doubt ought to have gone in favour of petitioner. In respect of disease as provided in Rule 7 (b), a disease which has led to an individual's discharge will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance in military service. In the present case it is not disputed that at the time the petitioner joined the service, he did not suffer from any ailment and no note of such kind was made in his service record. The medical opinion did not record any reason for

saying that it is not connected with military service though the disease could be caused by stress and strain. Petitioner was not engaged on sedentary duties. He was in active military service which required physical and mental strains. In the facts and circumstances of the case in my opinion the deeming clause was fully application in the present case. The deeming provision provided in Rule 7 (b) created a presumption that disability has been caused due to military service and for rebutting this presumption there should have been strong, valid and cogent reasons to rule out that the disease could be attributed to the military service. There is total absence of such reasons.

The observations made in this case has been followed in the case of Inder Jang v. Union of India (1999) 3 UPLBEC 2010.

In the case of Mahavir Singh Rawat vs. Union of India and others 2001 (1) A.W.C. 363 it has been held as under:

" In the case of normal service or individual pension specified 15 years qualifying period of service is required, while disability pension is not dependent on any particular length of service. Disability pension is awarded to an employee who has been invalided on account of disability which has occasioned due to any hurt, injury or illness. Sanction of disability pension, therefore, is not dependent on any

particular length of service. The provisions of Para 132 of Pension Regulations are not attracted in the present case. The case of the petitioner for disability pension is squarely covered by the provisions of Para 173 of the Pension Regulations.

The facts mentioned above shows that the petitioner has rendered more than 9 of year's service in the Indian Army and has spent a valuable time of his life in the service of Army. The disease of the petitioner was borne out to the petitioner during his employment in the Army and thus the employer of the petitioner was bound to give treatment to the petitioner during his service and if he was not found fit for military service, it was incumbent for the authorities to grand disability pension to the petitioner.

The Apex Court in the case Madan Singh Shekhawat vs. Union of India, (1999) 6 SCC 459 observed as under:

it is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the rule.

In Seaford Court Estates Ltd. v. Asher (1949) 2 All ER 155: (1949) 2 KB 481 Lord Denning, L.J. (as he then was) held:

"[When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament,…… and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. …… A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as

they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

In view of the aforesaid facts, the writ petition is allowed. A writ of mandamus is issued directing the respondents to pay disability pension to the petitioner in accordance with rules within a period of three months after the receipt of the certified copy of this order.

There will be no order as to costs.

Dated: February 15, 2006 **Rajesh Tandon J.**

*Dhyani